Supreme Court, U.S.
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No. 99-1189

In The
Supreme Court of the United States

THERESSA RAINS JOHNSON,
Petitioner,

v.

ANN W. ANDERSON,
Respondent.

On Direct Petition For Writ Of Certiorari To The Supreme Court of Florida

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REPLY TO BRIEF IN OPPOSITION

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15pp

QUESTION PRESENTED FOR REVIEW

Whether these Florida statutes, Fl. Prob. C. Ch. 733.613 and 733.614, violate the Fifth and Fourteenth Amendments of the Constitution of the United States of America, because, as applied, they deprive a person of real property to which she is entitled.

PARTIES TO THE PROCEEDINGS

The names of all parties who joined in this case are listed in the caption.

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OPINIONS BELOW

The reasonings and the decisions that base the opinions; and the opinions are reproduced in the appendix to the direct petition for writ of certiorari.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. sections 1254 and 1257.

STATUTORY PROVISIONS INVOLVED

Fla. Prob. C. Ch. 733.613, found in the appendix to the petition on pages 12a and 13a. Fla. Prob. C. Ch. 733.614, mentioned in the petition on page 7 and the emphasis added statement on page 2.

STATEMENT OF THE CASE

Procedural History

The circuit court case on judicial partition of undeveloped, undivided real property in Marion County, Florida is case No. 96-3992-CA-B, therefore, the 98-1781 is an error. (see appendix to the petition page 1a)

In November, 1996 defendant Anderson filed a third party complaint in the circuit court of Marion County, Florida but did not pursue it.

In April, 1997 Anderson filed a motion for summary judgment that was

denied in June, 1997.

In November, 1997 Anderson filed a motion for mediation of a settlement in case No. 96-3992-CA-B (partition) and it was granted. The mediation conference ended in an impasse on January 14, 1998.

In March, 1998 Anderson filed a motion for leave to file a counter - claim and counterclaim to quiet title, both at the same time. The counter - claim for quiet title was denied May 21, 1998.

On Monday, April 27, 1998 a non-jury trial on the partition case was held. On May 21, 1998 judgment of partition and appointment of commissioners was ordered by the circuit court of Marion County, Florida. Anderson appealed to the District Court of Appeal of the state of Florida Fifth District (5th DCA).

On Monday, March 15, 1999 oral arguments were heard in the 5th DCA with Honorable Warren H. Cobb, presiding judge. On April 23, 1999 the district court reversed the judgment of partition. Appellee Johnson filed a timely motion for rehearing which was denied 20th May, 1999.

On June 11, 1999 Johnson filed a notice with the 5th DCA to invoke the discretionary jurisdiction of the supreme court of Florida. The clerk of the supreme court of Florida received and filed the notice on June 25, 1999. On On October 20, 1999 the supreme court

of Florida declined to accept jurisdiction and denied Johnson's brief on jurisdiction. No motion for rehearing was allowed due to Fla. R. App. P. 9.330(d)

Johnson hand delivered forty copies of the petition for writ of certiorari to a clerk of the United States Supreme Court on December 20, 1999. The petition was acceptable but the attached appendix had to be reformatted to comply with the type size of the petition. With necessary corrections, the petition was returned to the clerk of this court by U, S. Mail on January 18, 2000.

Facts

On page 4 of the brief in opposition, first paragraph, line 10 the name is wrong, it should be ... denied Johnson's petition for review.

Under facts, page 4 of the brief in opposition second paragraph, his stepdaughter Theressa Rains Johnson, the Respondent, the term Respondent is incorrect, Johnson is the Petitioner in this case. Johnson is the sole beneficiary named in the Davis Williams' will and the testator named her as his choice for personal representative of his estate. The safekeeping term is in need of determination because the copy of the will has a certified stamped date, filed 95 Nov. 27 PM 1:07, and recorded Nov. 28,1995in Book 2196, page 377-380. From that moment the will became a document in the public records of Marion County, Florida.

In March, 1996, Johnson informed

Coleman, the grantor, that she wanted her interest in the land as a home site, before the authorization to sell and before the sale of the land at issue here.

Johnson was not given a notice as required in Florida statute 733.613, therefore she did not know about the Coleman petition to reopen the Edward Williams estate.

There is no mention about Florida statute 733.613 in the June 5,1996 order authorizing Coleman to sell the real property to Anderson. Further, this order authorized the sale of Edward Williams' heirs estate and not the portion of the land that make up the Davis Williams estate.

Johnson's first knowledge that the real property had been sold was the receiving of the check in the amount of $8,308.42, from the closing agent on or about July 03, 1996. This is about one-half of the amount Johnson would have demanded if she authorized Coleman to sell her interest, which she did not. A warranty deed was conveyed to Anderson by Coleman on June 28, 1996.

From August, 1996 to February 4, 1997 is approximately six months. This gave enough time for counsel on behalf of Anderson to state any objections he had about the probate proceedings on behalf of Johnson. Yet he did nothing. After the February 4, 1997 order by the probate court determined Johnson to be a feasimple owner of 20% of the land sold to Anderson, counsel on behalf of Anderson began the "no notice" clamor.

In the transcript of the trial it is alleged that the closing agent knew of the Davis Williams Will before the sale of the land, yet she did not stop the closing. Both Anderson and the closing agent had means or ways of knowing that Johnson had an interest in the land and that Coleman was not authorized to sell that interest, not by the probate court nor by Johnson.

Johnson sued Anderson for partition of the land in August, 1996. Anderson filed a motion to file a counterclaim in March, 1998, more than one and a half years later. The record on appeal can clear up the misleading statements. The county circuit court, did not need to determine whether Johnson owned a 20% interest in the property at issue, the probate court division had made that determination in its February 4, 1997 order.

A partition suit depends on two elements, (1) the defendant must be in possession of the property and (2) the plaintiff must have an immediate legal right or claim to the land in dispute. Both are met in this case, therefore Anderson is the right party to sue.

There is a document that was filed with the trial court that included a statement about the constitutionality of statute 733.613, but taken out of context, the statement came to be a direct allegation that the trial court ruled the statute unconstitutional. The trial court wrote,"However, the court finds that the statute is unconstitutional as it applies to the unique facts and circumstances of this case."

The 5th DCA of Florida implicated a use and duty of statute 733.613 that it cannot uphold. That statute cannot warrant a bonafide purchaser, of real property, a deed free of defects and claims against it.

ARGUMENT

The petitioner's contentions are supported by prior decisions of the United States Supreme Court.

All of the case citations in the respondent's brief in opposition are dissimilar to the fact patterns of the instant case.

The," was not raised in the pleadings in the state's trial court" is a taylor made issue with evidence to rebut it withheld from the record on appeal in a letter of directions to the clerk of the 5th DCA. The United States Supreme Court should grant the writ of certiorari to correct the injustice done to deprive a devisee of real property she inherited, through a will.

Cardinale v. Louisiana is a case that involve criminal action, the instant case is civil action. The rules and statutes are applied differently by the two actions.

Irving Trust Co. v. Day
This case involves contract law and wills. The three level court system of the state of New York is different from that of the rest of the states. The trial court of, and the appellate court of Florida have found the Davis Williams will valid and that Johnson is the sole beneficiary of his estate.

Disposition to the heirs at law is not an issue in the instant case.

Mullane v. Central Hanover Bank & Trust Co.

The citation concerning the "notice" is exactly how Johnson was passed over by Coleman, thus denying her due process, therefore violating her fourteenth amendments rights.
This case involves banks and banking under the New York Banking Law, section 100-c, c. 687,L. 1937.

Tulsa Professional Collection Services, Inc. v. Pope

There are no creditors bringing claims against the Edward Williams heirs estate nor the Davis Williams estate.

Labine v. Vincent

This case involves an illegitimate child, through her tutrix, sort to claim a decedent's estate. Louisiana intestate succession provisions precluded illegitimate children, from claiming rights of legitimate children.

All of the cases cited in respondent's brief in opposition are dissimilar to the instant case.
All of the cites for these cases can be found in the table of citations in the

respondent's brief in opposition.

There would be fewer lawsuits about real property ownership and defects in titles by deeds if the attorney doing the probate proceedings, or a title agent, or the purchaser did a diligent search of the appropriate public records, with regards to the land he/she wishes to purchase, before the sale.

The Fl. Prob. C. Ch. 733.613 is lacking legal constructive interpretation, as an appellate court in the state of Florida applied it in a manner that violates a citizen's fourteenth amendment rights.

Where the circuit court of Florida decided an issue and provided information not touched on by the appellate court, the circuit court's opinion is authoritative. In the Johnson case the judgment of partition should not have been reversed.

Certiorari is granted to review not just a decision of the "highest court" of a state, but of the highest court in the state "in which a decision could be had". This statement takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. The instant case is such a case.

The United States Supreme Court review only final judgments of highest available state courts to prevent its interference with state proceedings when the underlying dispute may be otherwise resolved. The instant case is pursueing from a final order, of Florida's 5th DCA, as the Supreme Court of Florida denied review.

"While the state, under some circumstances, may sue (as parens patriae) for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field it is the United States, and not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status."

A devisee's inheritance has been taken from her by a Florida appellate' court's use of an unconstitutionally applied Florida statute. All devisees need federal protection from a state that allows such misdeeds.

CONCLUSION

This case presents serious due process issues concerning two Florida statutes. I can think of no case of more transcending public importance than this one.

Petitioner respectfully requests this court grant certiorari to review the issues.

Respectfully submitted,

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